

## Message Text

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INFO OCT-01 IO-11 ISO-00 AF-06 ARA-06 EA-07 EUR-12 NEA-10

FEA-01 CIAE-00 INR-07 L-03 NSAE-00 NSC-05 EB-07

NRC-05 OES-03 DODE-00 PM-04 /098 W

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P 101716Z MAR 76

FM USMISSION IAEA VIENNA

TO SECSTATE WASHDC PRIORITY 7213

INFO USERDA GERMANTOWN PRIORITY

LIMITED OFFICIAL USE SECTION 1 OF 2 IAEA VIENNA 1905

DEPT PASS IO/SCT AND NRC

E.O. 11652: N/A

TAGS: PARM, TECH, IAEA, US

SUBJECT: NEGOTIATION OF SAFEGUARDS AGREEMENT PURSUANT TO U.S.  
VOLUNTARY OFFER

REF: (A) STATE 028571, (B) 75 STATE 168798, (C) 75 STATE  
263349

1. FOLLOWING INFORMAL DISCUSSIONS BY MISOFFS FEBRUARY  
13 AND BY MCFADDEN FEBRUARY 27, MISSION HAS RECEIVED  
LETTER DATED MARCH 4 FROM FISCHER, LEADER OF IAEA  
NEGOTIATING TEAM, RECAPITULATING SECRETARIAT COMMENTS  
AND SUGGESTIONS RE MAY 2, 1975 DRAFT, AS MODIFIED BY  
MISSION'S LETTERS OF DECEMBER 30, 1975 AND  
FEBRUARY 12, 1976. SUBSTANTIVE TEXT OF FISCHER'S  
MARCH 4 LETTER IS SET FORTH IN FOLLOWING PARAS:

2. ARTICLE 12 OF DRAFT PROPOSED TO READ:  
SUB-PARA (A) "IF THE UNITED STATES INTENDS TO EXERCISE  
ITS RIGHT TO WITHDRAW NUCLEAR MATERIAL IN ACTIVITIES  
IN FACILITIES IDENTIFIED BY THE AGENCY PURSUANT TO  
ARTICLES 2.B AND 39.B AND TO TRANSFER SUCH MATERIAL  
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ELSEWHERE OTHER THAN TO A FACILITY INCLUDED IN THE

LIST ESTABLISHED AND MAINTAINED PURSUANT TO ARTICLES 1.B AND 34, THE UNITED STATES SHALL, SUBJECT TO THE PROVISIONS OF ARTICLE 34.B(I), NOTIFY THE AGENCY IN ADVANCE OF SUCH WITHDRAWAL.

"NUCLEAR MATERIAL IN RESPECT OF WHICH SUCH NOTIFICATION HAS BEEN GIVEN SHALL CEASE TO BE SUBJECT TO SAFEGUARDS UNDER THIS AGREEMENT AS FROM THE TIME OF ITS REMOVAL FROM THE MATERIAL BALANCE AREA IN QUESTION.

SUB-PARA (B) "THE UNITED STATES SHALL PROVIDE THE AGENCY WITH INFORMATION WITH RESPECT TO TRANSFERS OUT OF THE UNITED STATES OF NUCLEAR MATERIAL SUBJECT TO SAFEGUARDS UNDER THIS AGREEMENT IN ACCORDANCE WITH ARTICLE 89. THE AGENCY SHALL KEEP RECORDS OF EACH SUCH TRANSFER AND, WHERE APPLICABLE, OF THE RE-APPLICATION OF SAFEGUARDS TO THE TRANSFERRED NUCLEAR MATERIAL."

3. FOLLOWING IS EXPLANATION IN MARCH 4 LETTER FOR FOREGOING PROPOSAL:

"FIRSTLY, IT SHOULD BE CLEAR THAT WHAT IS AT ISSUE IS NOT ONLY TRANSFERS TO OTHER 'FACILITIES', BUT ALSO TRANSFERS TO LOCATIONS IN THE UNITED STATES THAT DO NOT MEET THE DEFINITION OF A 'FACILITY' PURSUANT TO ARTICLE 90.I OF THE DRAFT AGREEMENT AS WELL AS TRANSFERS OUT OF THE UNITED STATES. SECONDLY, ARTICLE 34.B(I), IN THE FORMULATION NOW PROPOSED BY THE UNITED STATES, ALREADY MAKES PROVISION FOR THE REMOVAL OF 'FACILITIES' FROM THE LIST IN EXCEPTIONAL CIRCUMSTANCES, WITHOUT ADVANCE NOTIFICATION. THIS APPEARS ADEQUATELY TO COVER THE CONTINGENCY FOR WHICH THE FINAL SENTENCE OF THE FIRST PARAGRAPH OF ARTICLE 12.A(I) IN THE REVISION BY THE UNITED STATES TRANSMITTED ON 30 DECEMBER 1975 WAS INTENDED TO PROVIDE. THIRDLY, THE PHRASE IN THE UNITED STATES REVISION OF ARTICLE 12.A(I) BEGINNING WITH THE WORDS 'MAKING IT CLEAR' AND ENDING WITH THE WORDS 'ONLY IN A PEACEFUL NUCLEAR LIMITED OFFICIAL USE

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ACTIVITY' DID NOT APPEAR, IN FACT, TO MEET THE CONTINGENCY FOR WHICH IT WAS INTENDED TO PROVIDE, NAMELY, THE CONTINUED APPLICATION OF SAFEGUARDS ON NUCLEAR MATERIAL IN THE UNITED STATES WHEN SUCH MATERIAL IS SUBJECT TO SAFEGUARDS BY VIRTUE OF ANOTHER AGREEMENT WITH THE AGENCY.

"TO DEAL WITH THIS PROBLEM THE MEMBERS OF THE

AGENCY'S TEAM PROPOSED THE INCLUSION OF A SECOND SENTENCE IN ARTICLE 22 OF THE DRAFT AGREEMENT. THE TEXT OF THE SENTENCE IS GIVEN...BELOW AND FORESEES A SUBSTITUTION ARRANGEMENT. FOURTHLY, IN THE AGENCY'S VIEW, SAFEGUARDS UNDER THE AGREEMENT AUTOMATICALLY TERMINATE WHEN NUCLEAR MATERIAL LEAVES A FACILITY IDENTIFIED BY THE AGENCY PURSUANT TO ARTICLES 2.B AND 39.B. THE FIRST TWO SENTENCES OF THE REVISION OF ARTICLE 12.B PROPOSED BY THE UNITED STATES DO NOT THEREFORE APPEAR TO BE NECESSARY; AND THE SECOND SENTENCE DOES NOT, IN ANY CASE, APPEAR TO BE ENTIRELY COMPATIBLE WITH ARTICLES 2.A AND 2.B WHICH CLEARLY INDICATE THAT AGENCY SAFEGUARDS ARE APPLIED ONLY IN THE FACILITIES SELECTED IN ACCORDANCE WITH ARTICLE 2.B."

4. SUBSTITUTION ARRANGEMENT PROPOSED AS AN ADDITIONAL SENTENCE IN ARTICLE 22 WOULD READ:  
"HOWEVER, THE UNITED STATES AND THE AGENCY SHALL ENSURE THAT NUCLEAR MATERIAL BEING SAFEGUARDED UNDER THIS AGREEMENT SHALL BE AT ALL TIMES AT LEAST EQUIVALENT IN AMOUNT AND COMPOSITION TO THAT WHICH WOULD BE SUBJECT TO SAFEGUARDS IN THE UNITED STATES UNDER THE AGREEMENTS IN QUESTION. THE DETAILED ARRANGEMENTS FOR THE IMPLEMENTATION OF THIS PROVISION SHALL BE SPECIFIED IN THE SUBSIDIARY

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FEA-01 CIAE-00 INR-07 L-03 NSAE-00 NSC-05 EB-07

NRC-05 OES-03 DODE-00 PM-04 /098 W  
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P 101716Z MAR 76  
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ARRANGEMENTS PROVIDED FOR IN ARTICLE 39."

5. AGENCY'S TEAM PROPOSED THAT FOLLOWING WORDS SHOULD BE DELETED FROM TEXT OF REVISION OF ARTICLE 34.B(I) WHICH ACCOMPANIED MISSION'S LETTER OF 12 FEBRUARY 1976: "AND, WITH RESPECT TO SUCH MATERIAL, SHALL INCLUDE AN ASSURANCE BY THE UNITED STATES... THAT THE MATERIAL WILL BE USED ONLY IN A PEACEFUL NUCLEAR ACTIVITY."

6. FOLLOWING ADDITIONAL COMMENT IS MADE IN MARCH 4 LETTER RE PROPOSED DELETIONS IN ARTICLE 34.B(I) AND ARTICLE 12: "IT WOULD BE UNDESIRABLE TO SET A PRECEDENT IN WHICH THE STATE CONCERNED WOULD PROVIDE AN ASSURANCE RELATING TO SAEGUARDED MATERIAL, WHICH THE AGENCY WOULD BE UNABLE TO VERIFY AND THAT THE SITUATION TO WHICH THE PROPOSED UNDERTAKING WOULD RELATE, AS WELL AS THE NATURE OF THE ASSURANCE AND THE PROCEDURES SUGGESTED FOR IMPLEMENTING IT, WERE QUITE DIFFERENT FROM THE EXCEPTIONAL CONTINGENCY FOR WHICH ARTICLE 14 OF INFCIRC/153 WAS INTENDED TO PROVIDE AND FROM THE PROCEDURES SET FORTH IN THAT ARTICLE."

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7. DURING INFORMAL DISCUSSIONS, SECRETARIAT TEAM MEMBERS INDICATED THEIR PREFERENCE WAS TO DELETE REFERENCES IN BOTH ARTICLE 12.A AND 34.B(I) TO WITHDRAWAL, OR REMOVAL IN EXCEPTIONAL CASES, WITHOUT ADVANCE NOTIFICATION. FISCHER'S PROPOSAL DESCRIBED IN HIS LETTER, LEAVING RIGHT, IN EXCEPTIONAL CIRCUMSTANCES, OF REMOVAL OF FACILITY WITHOUT ADVANCE NOTIFICATION IN ARTICLE 34.B(I) IS SECRETARIT'S FALL-BACK POSITION, PROBABLY REFLECTING DOUBTS RAISED BY U.S. SIDE DURING INFORMAL DISCUSSIONS. MISSION HAS SINCE GIVEN FURTHER THOUGHT TO MATTER, RECALLING PARTICULARLY OBSERVATION BY SECRETIAT TEAM MEMBERS THAT, IN ABSENCE ANY SPECIFIED MINIMUM INTERVAL, ADVANCE NOTIFICATION COULD CONSIST OF PHONE CALL MOMENTS BEFORE ACTUAL WITHDRAWAL. ON OTHER HAND, EXPLICIT RIGHT TO WITHDRAW OR REMOVE WITHOUT ADVANCE NOTIFICATION, EVEN THOUGH LIMITED TO EXCEPTIONAL CIRCUMSTANCES, COULD BE PORTRAYED AS MAKING MEANINGLESS BASIC UNDERTAKING IN ARTICLE 1.A AND AS SUBJECT TO EXPLOITATION AS PRECEDENT IN OTHER AGREEMENTS. WHILE NEITHER OF APPROACHES IS PARTICULARLY APPEALING, MISSION BELIEVES OVERALL

USG INTERESTS WOULD BE SERVED BEST BY DELETION IN BOTH ARTICLES 12.A AND 34.B(I) OF RIGHT TO WITHDRAW OR REMOVE WITHOUT ADVANCE NOTIFICATION AND RELIEANCE, INSTEAD, UPON "LAST-MOMENT" NOTIFICATION FOR EXCEPTIONAL CIRCUMSTANCES. IF THIS IS UNACCEPTABLE, MISSION RECOMMENDS ACCEPTANCE FISCHER'S PROPOSAL THAT, IN EFFECT, PERMITS USG TO REMOVE ENTIRE FACILITY, WITHOUT ADVANCE NOTIFICATION, IF ANY MATERIAL IS TO BE WITHDRAWN FROM THAT FACILITY.

8. MISSION SUGGESTS, HOWEVER, THAT FISCHER'S PROPOSED REDRAFT OF ARTICLE 12.A (PARA 2 ABOVE) BE FURTHER MODIFIED TO READ "...ELSEWHERE IN THE UNITED STATES OTHER THAN, ETC." THIS SUGGESTION WOULD AVOID REDUNDANCY WITH ARTICLE 12.B, AS REFORMULATED BY FISCHER, WHICH APPLIES TO TRANSFERS OUT OF U.S.

9. IN FISCHER'S PROPOSED REFORMULATION OF ARTICLE LIMITED OFFICIAL USE

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12.B (PARA 2 ABOVE), WE SUGGEST FIRST SENTENCE BE RESTRUCTURED TO READ, "THE UNITED STATES SHALL PROVIDE THE AGENCY WITH INFORMATION, IN ACCORDANCE WITH ARTICLE 89, WITH RESPECT TO TRANSFERS OUT OF THE UNITED STATES, OF NUCLEAR MATERIAL SUBJECT TO SAFEGURADS UNDER THIS AGREEMENT."

10. MISSION ALSO CALLS ATTENTION TO OMISSION IN FISCHER'S REFORMULATION OF ARTICLE 12.B OF FIRST SENTENCE OF U.S. DRAFT, WHICH READS "THE UNITED STATES SHALL HAVE THE RIGHT TO TRANSFER, ETC." THIS OMISSION WAS BASED ON SECRETARIAT'S BELIEF THAT IT WAS UNNECESSARY, SINCE NOTHING IN AGREEMENT CAN BE CONSTRUED TO LIMIT SUCH RIGHT. MISSION AGREES BUT SEES NO PROBLEM IN RETAINING SENTENCE, IF DESIRED.

11. IF DELETION PROPOSED BY FISCHER IN ARTICLE 34.B(I) (PARA 5 ABOVE) IS ACCEPTED, FIRST SENTENCE OF ARTICLE 34.B(I) SHOULD BE REPUNCTUATED TO READ, "THE AGENCY SHALL BE NOTIFIED IN ADVANCE. THE NOTIFICATION SHALL SPECIFY THE FACILITY OR FACILITIES BEING REMOVED, THE DATE OF REMOVAL AND THE QUANTITY AND COMPOSITION F THE NUCLEAR MATERIAL CONTAINED THEREIN AT THE TIME OF NOTIFICATION."

12. ADVICE RE FOREGOING REQUESTED SOONEST.STONE

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** AGREEMENT DRAFT, NEGOTIATIONS, NUCLEAR SAFEGUARDS, FISSIONABLE MATERIALS TRANSFER  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 10 MAR 1976  
**Decaption Date:** 01 JAN 1960  
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**Disposition Approved on Date:**  
**Disposition Authority:** saccheem  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
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**TAGS:** PARM, TECH, US, IAEA  
**To:** STATE  
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